

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ISSIS Y. LAUDERDALE,
Petitioner.

No. 2 CA-CR 2014-0445-PR
Filed March 12, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pinal County

No. S1100CR201300519

The Honorable Henry G. Gooday Jr., Judge

REVIEW GRANTED; RELIEF GRANTED

COUNSEL

M. Lando Voyles, Pinal County Attorney
By Renee J. Waters, Deputy County Attorney, Florence
Counsel for Respondent

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Robert L. Murray, Tucson
Counsel for Petitioner

MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 Issis Lauderdale seeks review of the trial court's order denying, after an evidentiary hearing, her of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). For the following reasons, we grant relief.

¶2 After a jury trial, Lauderdale was convicted of transportation of marijuana for sale and sentenced to a six-year prison term. Although she filed a notice of appeal, we dismissed the appeal at her request. Lauderdale then sought post-conviction relief, arguing in her petition that trial counsel had been ineffective in failing to advise her of the state's initial plea offer providing for a 1.5-year prison term. She also asserted that counsel did not timely inform her of a second plea offer for a 2.5-year sentence, and that she had learned of that offer on the first day of trial. She further claimed that, after a hearing held pursuant to *State v. Donald*, 198 Ariz. 406, 10 P.3d 1193 (App. 2000), in which the trial court advised her of the sentence she could face if she was found guilty after a jury trial, trial counsel nonetheless had told her "the most she could get if convicted was the same as the offer, 2.5 years." Lauderdale also detailed counsel's purported shortcomings during trial preparation and trial, suggesting his "disregard for his most basic responsibilities lend[s] credence to the fact that he was ineffective in conveying the plea offers."

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¶3 The trial court held an evidentiary hearing, at which trial counsel, Lauderdale, and the trial prosecutor testified. After the hearing, the court found Lauderdale had been informed of both pleas, but it did not expressly address Lauderdale's claim that counsel had not discussed the first plea with her nor her claim he had told her to disregard the sentencing advisory given by the court before she rejected the second offer. The court further observed that it did not need to determine whether counsel had been ineffective because the outcome of the trial would not have changed irrespective of counsel's "alleged errors." Thus, the court denied relief, concluding, Lauderdale "has failed to state a colorable claim." This petition for review followed.

¶4 On review, Lauderdale first asserts the trial court erred in concluding counsel was not ineffective at trial when "[t]he relief that had been requested was reinstatement of the plea" on the basis that he did not adequately convey the plea offers to her. Pursuant to Rule 32.8(d), in making its ruling after an evidentiary hearing, a trial court must "make specific findings of fact, and state expressly its conclusions of law relating to each issue presented." Here, the only legal conclusions reached by the court related to its conclusion that counsel was not ineffective at trial or during trial preparation. Although Lauderdale criticized counsel's trial conduct, she did so only in an effort to impugn counsel's credibility. She did not raise a separate claim of ineffective assistance of counsel based on counsel's trial conduct. And the court's finding that counsel had been effective at trial is not relevant to Lauderdale's claim that he had been ineffective in advising her in regard to the state's plea offers.

¶5 Moreover, the trial court made no findings of fact or law that would dispose of Lauderdale's claim that trial counsel had been ineffective in regard to the plea offers made by the state. "[A] defendant may state a claim for post-conviction relief on the basis that counsel's ineffective assistance led the defendant to make an uninformed decision to reject a plea bargain and proceed to trial." *Donald*, 198 Ariz. 406, ¶ 14, 10 P.3d at 1200. Although Lauderdale had been aware of the 1.5-year plea offer, the trial court did not address her claim that counsel did not discuss the plea with her or suggest whether or not she should accept it, if it was available.

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¶6 The state does not dispute the absence of Rule 32 findings, instead urging this court to accept trial counsel’s testimony over defendant’s. Assessing the credibility of the witnesses, however, is within the sole province of the trial court. *State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988). We also reject the state’s suggestion that the *Donald* hearing would “cure[]” any ineffective assistance claim based on counsel’s alleged advice after that hearing. If counsel had urged Lauderdale to ignore the court’s sentencing advisory and given her incorrect information about the sentence she could face upon conviction, that conduct could have caused her to reject the state’s plea offer.

¶7 We therefore grant review and relief.¹ We remand this case to the trial court for it to enter an order including factual findings and conclusions of law in compliance with Rule 32.8(d), specifically addressing the claims raised by Lauderdale in her petition for post-conviction relief regarding counsel’s handling of and advice about the plea offers.

¹Because the trial court’s findings did not comply with Rule 32.8(d), we need not address the additional arguments Lauderdale raises in her petition for review.